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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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### CLEARINGHOUSE RULE 10-100

#### Comments

**[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Reference Bureau and the Legislative Council Staff, dated September 2008.]**

#### 1. Statutory Authority

a. The department lacks statutory authority for s. ATCP 16.04 (4), which states that a person who breeds, raises, or sells dogs for scientific research is exempt from licensure requirements. The statutes do not authorize the department to exempt any person from licensure requirements based on the type of dog bred, raised, or sold, or the purpose for which the dog is bred, raised, or sold. This provision should be removed.

b. Section 173.41 (2) (f), Stats., states that an individual providing foster care to a dog in the individual's home at the request of a person operating a licensed animal shelter is not required to be licensed. Is this exemption intended to be encompassed in s. ATCP 16.04 (2), which states that a person caring for dogs as an agent of a licensee is not required to be licensed? It appears that under the rule, agents are subject to many of the requirements for licensure other than the payment of license fees (i.e., they are subject to inspections and their facilities and operation must comply with the standards of care established in the rule.) Therefore, it is unclear whether s. ATCP 16.04 (2) adequately implements the specific exemption for foster care required under s. 173.41 (2) (f), Stats.

c. Section 173.41 (8) (b), Stats., prohibits the sale at auction of any dog that is not spayed or neutered without providing proof that the dog has tested negative for brucellosis. Section ATCP 16.16 (4) (a) 6., however, imposes this requirement on the sale of all dogs sold at

auction, even those that are spayed or neutered. That provision should be modified to conform to the statute.

## **2. Form, Style and Placement in Administrative Code**

- a. In s. ATCP 16.14, there are two subsections that are numbered “(2)”.
- b. In s. ATCP 16.16 (4) (a), there are two subdivisions that are numbered “5.” and two subdivisions that are numbered “6.”.
- c. The subunits of s. ATCP 16.28 that are lettered should be numbered subsections.

## **4. Adequacy of References to Related Statutes, Rules and Forms**

- a. The cross-reference in s. ATCP 16.04 (2) (b) 7. appears to be incorrect.
- b. The cross-reference in s. ATCP 16.06 (3) appears to be incorrect.
- c. The cross-references in s. ATCP 16.08 (3) (intro.) and (4) (intro.) appear to be incorrect.
- d. The cross-reference in s. ATCP 16.14 (3) appears to be incorrect.

## **5. Clarity, Grammar, Punctuation and Use of Plain Language**

a. Why does the definition of temporary dog market in s. ATCP 16.01 (14) not contain the phrase “and may sell other items”, which appears in the statutory definition of the term in s. 173.41 (1) (g)? The statutory definition encompasses a venue at which items other than dogs are also sold, such as a flea market, while the definition in the rule could be interpreted to refer to a venue at which only dogs are sold.

b. In s. ATCP 16.04 (2) (a) 3., “for” should be replaced with a phrase such as “to assess” or “to determine”.

c. For purposes of s. ATCP 16.04 (2) (b), and elsewhere in the rule, how is it determined that a dog is “legally controlled” by a person other than the dog’s owner?

d. Section 173.41 (4), Stats., lists the intentional failure to disclose a material fact as one of the grounds for license denial, refusal to renew, or revocation. Why is failure to disclose a material fact not included as one of the grounds for denial, suspension, or revocation in s. ATCP 16.10 (2) (a)?

e. In s. ATCP 16.10 (2) (b) 1., “; denial, or revocation” should be inserted after “suspension”.

f. In s. ATCP 16.10 (2) (b) 2., “according to” should be replaced with “following the procedures set forth in”.

g. In the second sentence of s. ATCP 16.14 (1), “at the person” should be replaced with “at which the person”.

h. The statement in s. ATCP 16.16 (7) that a certificate of veterinary inspection may incorporate information from a prior certificate is confusing. Does this mean that the veterinary inspection conducted for purposes of a prior certificate is sufficient for a subsequent certificate pertaining to the same dog?

i. The requirement in s. ATCP 16.20 (2) (e), that a licensee must follow any recommendations made by a veterinarian conducting a routine examination of a dog, appears to be rather broad. Is it possible that a dog owner might fail to follow a veterinarian's recommendations but nevertheless be caring for the dog in a reasonable and appropriate manner? In addition, if a dog owner receives conflicting opinions from two veterinarians regarding the best course of treatment for a disease or injury, how would the licensee maintain compliance with the rule?

j. In s. ATCP 16.20 (4), it is unclear what is meant by "repetitive unsupervised physical activity, restrictive of other activities", and in s. ATCP 16.20 (7) (d), the meaning of "daily visual enrichment" is unclear. Could these provisions be explained in notes?

k. Section ATCP 16.20 (5) (b) would be more clear if "from males" were inserted after "separation".

l. Section ATCP 16.20 (5) (e) states that a dam in whelp must be separated from other dogs for at least one week prior to the expected whelping date. Must the dam be housed in a whelping enclosure, described in s. ATCP 16.22 (3) at that time, or may she be kept alone in a standard primary enclosure until the puppies are born?

m. In s. ATCP 16.22 (3) (e), the requirement that an enclosure be designed so that a dam can "be away from puppies" should be more specific. Specifically, if the intent is to require the enclosure to include an area for the dam that is physically inaccessible by the puppies, that should be stated explicitly in the rule.